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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,490	11/13/2003	Anne Dussaud	J6866(C)	8338

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT	PAPER NUMBER
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3736

MAIL DATE	DELIVERY MODE
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02/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,490

Applicant(s)

DUSSAUD ET AL.

Examiner

JEFFREY G. HOEKSTRA

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007 and 13 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 01/16/2007, 02/23/2007, and 09/13/2007 have been entered.

Notice of Amendment

2. In response to the amendments filed on 01/16/2007, 02/23/2007, and 09/13/2007, amended claims 3, 8, 9, and 10 and new claim(s) 17-20 is/are acknowledged. The current rejections of the claims are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

Drawings

3. The drawings were received on 11/14/2006. The drawings are acceptable.

Claim Objections

4. Claim 1 is objected to because of the following informalities: the positive recitation of capitalized words appears to be informal and may render the claim indefinite as being unclear with respect to being only one sentence. Appropriate correction is required.

5. Claim 1 is objected to because of the following informalities: the positive recitation of "means for collecting, storing and displaying said emission signal;" in line 5

Art Unit: 3736

should apparently read "means for collecting, storing and displaying said emission signal; and". Appropriate correction is required.

6. Claim 5 is objected to because of the following informalities: the positive recitation of "to product skin/skin frictional forces" in line 8 should apparently read "to produce skin/skin frictional forces". Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3-6, and 8-11 are rejected under 35 U.S.C. 102(a) as being anticipated by Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al. ("Finger perception metrology. Correlation between friction force and acoustic emission"), hereinafter Flament.

9. For claims 1, 3-6, and 8-11, Flament discloses a prototype tactile acoustic analysis apparatus (Flament et al, pages 168-169), comprising: means for acoustic signal- generating, collecting, storing, displaying, and correlating of frictional forces operably generated via animal skin rubbing animal skin that is capable of use as a clinical evaluation tool of skin attributes (Flament et al, pages 168-169). Said apparatus is capable of being used by consumers or clinicians (e.g. a beautician or professional advisor) to study/evaluate the impact the effect of the application cosmetic compositions that affect skin attributes, including: hydration, texture, roughness, porosity, wrinkles, and pathologies of cutaneous tissue (psoriasis, eczema, dry skin, etc...) (Flament et al, pages 168-169) and (b) a medium for indicia of at least said two said skin attributes (i.e.

Art Unit: 3736

test results) that allows said clinician to distinguish the effect of said application of cosmetic composition (Flament et al, pages 168-169). The apparatus as disclosed by Flament is capable of being placed alongside a container holding said cosmetic composition and facilitating cosmetic composition selection based on the determined skin attributes.

10. For claims 17-20, Flament discloses a system that is used in air, wherein the acoustic emission signal is generated from a hand or finger and a second body part (Flament et al, pages 168-169).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flament in view of Fleming (Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, Fleming "Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology"). Flament discloses the claimed invention as set forth above except for expressly disclosing a means for digitally displaying test result signals via the internet and/or handheld software. Fleming teaches a means for digitally displaying test result signals via the internet and/or handheld software (Fleming, pages 170-171). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. All of the component parts are known in Flament and Fleming. The only difference is the combination of the component parts into a single device. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the components as taught by Flament with the components as taught by Fleming to achieve the predictable results of providing an alternate means to display diagnostic data.

Response to Arguments

14. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection, e.g. a different interpretation of a previously applied reference in addition to further limitations.

Art Unit: 3736

15. However, Applicant's arguments filed 11/14/2006 with respect the anticipatory rejection of the claims under Abstract have been fully considered but they are not persuasive. Applicant argues Abstract teaches away from the present claims which create emission signals from a body contacting skin on skin. The Examiner disagrees and notes the following:

16. In response to applicant's argument that Abstract teaches away from the present claims which create emission signals from a body contacting skin on skin, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, the Examiner notes that (a) the Abstract discloses "We have established a good correlation between the force of friction and the acoustic signal, so the measures made with the finger, provided with an acoustic sensor on the skin, allow to the clinicians and to the cosmetic industry to estimate the sensory properties while making a natural gesture of the touch. The device can be used to study the impact of a cosmetic formulation on the skin by evaluating the variations of sweetness, adhesion but especially effect of hydration as well as pathologies of the cutaneous tissue (psoriasis, eczema, dry skins...)" and (b) the device as disclosed by abstract is capable of the functional limitations as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is

Art Unit: 3736

(571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J.H./

Jeff Hoekstra
Examiner, Art Unit 3736

Bradley
Br. in Samuel
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